

78th MEETING
OF THE
MARYLAND HEALTH CARE COMMISSION

Tuesday, November 22, 2005

Minutes

Chairman Salamon called the meeting to order at 1:00 p.m.

Commissioners present: Wilensky, Conway, Krumm, Lucht, Moffit, Moore, Nicolay, Pollak, Row, Toulson, and Todd

ITEM 1.

Approval of the Minutes

Commissioner Krumm made a motion to approve the minutes of the October 19, 2005 meeting of the Commission, which was seconded by Vice Chair Wilensky and unanimously approved.

ITEM 2.

Update on Commission Activities

- Data Systems and Analysis
- Health Resources
- Performance and Benefits

Rex W. Cowdry, M.D., the Commission's Executive Director, was pleased to announce that the Department of Legislative Services has completed its preliminary evaluation of the Commission. The evaluation recognizes a continuing need for the health regulatory programs provided by the Commission, and recommends an unusual 10 year extension. The next sunset review of the Commission will take place before July 1, 2017.

Pamela W. Barclay, Deputy Director of Health Resources, noted that [*An Analysis of Future Need for Nursing Home Beds in Maryland: 2010*](#) was posted on the Commission's website for public comment. Public comments should be directed to the Commission no later than January 9, 2006. Ms. Barclay added that the *Maryland Home Health Agency Statistical Profile* for fiscal years 2002 and 2003 are also posted on the Commission's website. These reports summarize the data on the utilization and financing of home health agency services. Ben Steffen, Deputy Director of Data Systems and Analysis, announced the release of the 2005 EDI/HIPAA Review. Mr. Steffen said that the Trauma Fund update would not be released until Congress takes action. Bruce Kozlowski, Deputy Director of Performance and Benefits, noted that he and staff have been reviewing all current reports and interactive data in other states to determine future directions. Copies of the *Update* were made available on the documents table at the meeting and on the Commission's website.

ITEM 3.

ACTION: Comprehensive Standard Health Benefit Plan - Short Term Options for Consideration

Chairman Salamon announced that at the Commission's September 2005 meeting, staff presented a series of options for reforming the Comprehensive Standard Health Benefit Plan. He said the proposed reform options were intended to provide employers with greater choice in benefits and costs and insurers with greater flexibility in benefit design and pricing. Chairman Salamon said that because the Commission is sensitive to the potential impact of change on Maryland's small employers, it chose to hold a series of five town meetings across the state to allow for comment on the proposals and suggestions for improvements or alternative options for reform. As a result of the town meetings, Commission staff developed additional options for reforming the Plan and conducted an additional meeting. Bruce Kozlowski presented those options for reform to the Commission for approval.

Mr. Kozlowski provided the Commission with historical background information on the development of the CSHBP. He said that more than 58% of Maryland small employers do not participate in the CSHBP. Increased employer participation and increased participation by the young and healthy were additional goals of the Commission's small group market reform efforts. Mr. Kozlowski said that the Commission conducted a series of town meetings throughout the state and, as a result of the town meetings, staff developed additional options for reforming the CSHBP. He said that recommended actions resulting from public input at town meetings and in written testimony were to eliminate the three original options for reform that staff presented to the Commission in September from consideration. Mr. Kozlowski then outlined the following recommended proposed changes to the CSHBP: increase the point of service (POS) deductibles; increase the hospital inpatient copayment for HMOs; replace the existing pharmacy benefit with the PharmFlex pharmacy benefit in all non-HSA compatible delivery systems; and implement an HSA-compatible HMO product. Following discussion, these changes were approved by the Commission, with Chairman Salamon, Vice Chair Wilensky, Commissioners Conway, Krumm, Lucht, Moffit, Moore, Nicolay, Pollak, and Todd voting for the motion and Commissioner Row opposed.

ACTION: Comprehensive Standard Health Benefit Plan - Short Term Options for Consideration, is hereby APPROVED.

ITEM 4.

PRESENTATION: *Final Report of the Certificate of Need Program Task Force* - Release for Public Comment

Chairman Salamon said that the Certificate of Need Task Force held its final meeting on October 27, 2005. He asked Commissioner Robert Nicolay, Chairman of the Task Force, to present the final report and recommendations to the Commission and request that the report be released for public comment.

Commissioner Nicolay provided an overview of the Certificate of Need Task Force, including the purpose, composition, and process undertaken. He said the Task Force recommended increasing the capital expenditure review threshold; removing requirements for public informational hearings/exemption findings from CON for hospital closures; removing home health agencies from the definition of "health care facility"; and revising Determination of Non-coverage requirements for hospitals taking the "pledge" not to increase rates to deem the request approved if not acted upon by the Commission within 60 days. Commissioner Nicolay noted that these changes would require legislative action. He also presented a series of Task Force recommendations that would require changes to COMAR regulations: expanding the

Commission's definition of business office equipment to include health information technology/medical information systems; streamlining the review process for hospital renovation and new construction projects; requiring that if a staff report is not issued for Commission action with 90 days of docketing, it must be reported to the Commission; updating the State Health Plan; restructuring the review process to require an application review conference and project status conference; and modifying the re-docketing rules. Commissioner Nicolay said the Task Force also recommended changes that would require administrative action only: the Commission should form a technical advisory group to support State Health Plan update and study alternatives; prepare automated application forms for CON review applications and the filing of determinations of non-coverage; and design a CON website to provide greater access to filing. Commissioner Nicolay said the Task Force recommendations would be posted on the Commission's website for a public comment period closing on December 9, 2005. Commissioner Row suggested providing a chart in the report with additional information on the capital expenditure threshold and home health agency characteristics. Following discussion, Commissioner Nicolay made a motion to release the report for public comment, which was seconded by Commissioner Lucht, and unanimously approved.

ACTION: Final Report of the Certificate of Need Program Task Force – Release for Public Comment, is hereby APPROVED.

ITEM 5.

PROPOSED ACTION: COMAR 10.24.10 – State Health Plan for Facilities and Services: Acute Inpatient Services – Modifications

Chairman Salamon said this agenda item involves modifications to the Acute Inpatient Services Section of the State Health Plan. He asked Patricia Cameron, Chief, Acute and Ambulatory Care Services, to outline the proposed modifications for consideration.

Ms. Cameron said the proposed changes in Supplement 5 to the State Health Plan for Acute Inpatient Services Chapter of the State Health Plan are designed to eliminate outdated background information and obsolete review standards from the Plan. She noted that the proposed changes are an initial step to streamline the CON review process while a comprehensive update of the Chapter is undertaken. Ms. Cameron said following publication in the *Maryland Register*, there would be a formal 30-day public comment period for the proposed changes. Commissioner Row made a motion that the Commission approve Supplement 5 for adoption as proposed permanent regulation, which was seconded by Commissioner Moffit, and was unanimously approved.

PROPOSED ACTION: COMAR 10.24.10 – State Health Plan for Facilities and Services: Acute Inpatient Services is hereby APPROVED.

ITEM 6.

ACTION: CERTIFICATE OF NEED (CON)

- **Anne Arundel County Review:**
 - **CON ACTION: Anne Arundel Medical Center, Certificate of Need for Construction of Nine-Story Patient Tower, Expansion of Inpatient Beds, Emergency Department, and Surgical and Recovery Areas, Docket No. 04-02-2153**

Chairman Salamon asked Commissioner Roscoe Moore, as the Reviewer, to present his recommended decision on an application for Certificate of Need for an expansion project at the Anne Arundel Medical Center. Commissioner Moore said that Anne Arundel Medical Center submitted an application for a proposed expansion and construction project. He said the project involves construction of a nine-story patient tower, expansion of medical surgical bed capacity, expansion of operating room capacity, and expansion of emergency department treatment capacity. Commissioner Moore said that after analyzing the application, he recommended that the Commission issue an order that, upon the timely submission by the Anne Arundel Medical Center of certain documents that make the project consistent with State Health Plan standards and regulations, a CON will issue. He said there were no interested parties to this review. Commissioner Moore added that the Anne Arundel County Medical Center had accepted his recommended decision and would file the requested documents. Commissioner Moore made a motion that the Commission adopt his recommended decision, which was seconded by Commissioner Conway, and unanimously approved.

ACTION: Anne Arundel Medical Center, Certificate of Need for Construction of Nine-Story Patient Tower, Expansion of Inpatient Beds, Emergency Department, and Surgical and Recovery Areas, Docket No. 04-02-2153, is hereby APPROVED.

- **Exceptions Hearing: Baltimore Washington Medical Center: Certificate of Need for Construction of Eight-Story Patient Tower (West) and Two-story Addition (South), Replacement and Expansion of Inpatient Beds, Expansion of Emergency Department, and Establishment of New Obstetric Service, Docket No. 04-02-2154**

Chairman Salamon said the Baltimore Washington Medical Center applied for a Certificate of Need for an expansion project at the hospital. He said that Harbor Hospital Center was granted interested party status, and was opposed to Baltimore Washington's proposal to establish an obstetrics service. He asked Commissioner Moore, the Reviewer of the hospital's application, to present a summary of his Recommended Decision for Commission action.

Commissioner Moore said that Baltimore Washington's proposed project included the establishment of an obstetric service; the construction of an 8-story patient tower; the increase of the hospital's medical-surgical bed capacity, the replacement of many semi-private rooms with private rooms; the expansion of the Emergency Department; and a budget of \$124 million. Commissioner Moore recommended that the Commission approve the application.

Harbor Hospital Center filed exceptions to the Recommended Decision and Baltimore Washington Medical Center filed a response to those exceptions. The Commission heard oral argument on the exceptions.

Stephen Sfekas, on behalf of Harbor Hospital Center, argued that the Recommended Decision was inconsistent with the Commission's regulatory requirements regarding need, minimum volume standards, need for obstetrics beds, and perinatal standards. He further argued that the Reviewer's analysis of the impact on Harbor Hospital and the lack of notice of the Health Services Cost Review Commission's (HSCRC) report were inconsistent with the Commission's review standards and, therefore, the Commission should not adopt the Reviewer's Recommended Decision.

Jack Tranter, on behalf of Baltimore Washington Medical Center, responded that the Commission should adopt Commissioner Moore's Recommended Decision. He argued that, because Baltimore Washington Medical Center will eliminate physical capacity to operate 10 MSGA beds, the Reviewer's finding is consistent with the Commission's 2010 bed need projections. He also argued that the HSCRC report was provided to the parties on October 28, 2005; that the Reviewer's analysis correctly found that the

proposed project is consistent with the need, minimum volume standards, and perinatal standards; and that Baltimore Washington Medical Center demonstrated sufficient funding for separately staffing the pediatric unit and the nursery. He requested that the Commission reject the exceptions filed by Harbor Hospital, adopt the Recommended Decision, and grant a Certificate of Need for the project.

At the conclusion of the oral argument, Commissioner Moore presented a summary of his analysis and asked the Commission to accept his Recommended Decision. Following discussion, Commissioner Moffit made a motion to accept Commissioner Moore's Recommended Decision and approve Baltimore Washington Medical Center's application for Certification of Need, which was seconded by Commissioner Moore. The motion was approved, with Commissioners Conway, Krumm, Lucht, Moffit, Moore, Nicolay, Todd, and the Chairman voting in favor of the motion, and Commissioner Row opposing the motion.

ACTION: Baltimore Washington Medical Center, Certificate of Need for Construction of an Eight-Story Patient Tower (West) and Two-story Addition (South), Replacement and Expansion of Inpatient Beds, Expansion of the Emergency Department, and Establishment of a New Obstetric Service, Docket No. 04-02-2154, is hereby Approved.

- **Johns Hopkins Bayview Medical Center: Certificate of Need for the Addition of 4-Mixed Use Operating Rooms, Expanded Support Services, and Upgrades to Air Handling Equipment, Docket No. 05-24-2165**

Chairman Salamon said the Johns Hopkins Bayview Medical Center applied for a Certificate of Need to add four general purpose operating rooms in renovated space, redesign the pre and post operative and support areas, and construct a new mechanical penthouse to upgrade air handling equipment. He asked Joel Riklin, Health Policy Analyst, to present a summary of the staff recommendation for Commission action. Mr. Riklin said that Johns Hopkins Bayview Medical Center is an acute care general hospital in Baltimore City, seeking approval for the capital expenditure of \$8,699,840, plus future inflation estimated to be \$1,126,576, for the expansion and renovation of its surgery department. He said that Bayview is proposing to finance the entire capital cost from cash and states that it is not seeking a rate increase for this project. Mr. Riklin said Bayview's proposed project is consistent with the applicable State Health Plan standards and regulations. Commissioner Nicolay made a motion to approve the recommendation, which was seconded by Commissioner Row, and approved by Commissioners Conway, Lucht, Moffit, Moore, Nicolay, Row, Todd, and the Chairman voting in favor of the adopting the Staff Recommendation. Commissioner Krumm recused herself.

ACTION: Johns Hopkins Bayview Medical Center: Certificate of Need for Addition of 4-Mixed Use Operating Rooms, Expanded Support Services, and Upgrades to Air Handling Equipment, Docket No. 05-24-2165, is hereby APPROVED.

- **Lorien LifeCenter-Baltimore County, Inc., Certificate of Need for the Relocation of 15-Existing, Temporarily Delicensed Beds to the Proposed LorienLife Center-Baltimore County Nursing Home Project, Docket No. 05-03-2153**

Rhoda Wolfe-Carr, Health Policy Analyst, said that Lorien LifeCenter is seeking the Commission's approval of a CON to add 15 comprehensive care facility beds that have been temporarily delicensed since April 18, 2004 from Armacost Nursing Home, a now closed Baltimore County nursing facility, to Lorien's previously CON-approved 70-bed CCF to be located at 12230 Roundwood Road, in Timonium. Staff recommended the proposed project be approved with the following conditions:

1. Lorien Life – Baltimore County has until no later than June 22, 2006, 27 months after the granting of the March 22, 2005 CON, to license and begin operating the facility;
2. The performance requirements in this CON are not subject to extension under COMAR 10.24.10.12E or other authority, except for extraordinary cause shown;
3. Any problems that may cause delay arising from the Real Estate Exchange Agreement will not constitute an extraordinary cause for the extension of any performance requirements related to the implementation of this project; and
4. Lorien Life Center-Baltimore County cannot contest any good faith proceeding to withdraw this Con for failure to meet performance requirements.

Following discussion, Commissioner Todd made a motion that the Commission approve the Certificate of Need, which was seconded by Commissioner Row, and unanimously approved.

ACTION: Lorien LifeCenter-Baltimore County, Inc.: Certificate of Need for the Relocation of 15-Existing, Temporary Delicensed Beds to the Proposed LorienLife Center-Baltimore County Nursing Home Project, Docket No. 05-03-153, is hereby APPROVED.

- **Memorial Hospital at Easton: Modification to Certificate of Need for Construction of Emergency Department and Ambulatory Care Departments, Docket No. 03-20-2112**

Chairman Salamon said that Memorial Hospital at Easton submitted an application for certain changes to its CON-approved capital project. He asked Ms. Wolfe-Carr to present the staff recommendation for Commission action. Ms. Wolfe-Carr said the changes that Memorial Hospital at Easton proposed are related to cost increases in the portion of its 2003 project for the construction of a new, expanded Emergency Department, reconfiguration of space dedicated to the hospital's ambulatory care services, upgrades to its heating, ventilating, and air-conditioning system, and other infrastructure elements. She said that due to a court appeal, they have not begun the construction related to the Emergency Department, ambulatory care, and infrastructure upgrades. Ms. Wolfe-Carr said the hospital has received one permissible six-month extension to its first performance requirement for these phases of its project with a deadline of January 17, 2006. Staff found the capital project proposed by the hospital to be well-conceived, cost-effective, and needed by its constituents at the time and the unavoidable delays have not changed that finding. Therefore, staff recommended approval of the modification to the hospital's Certificate of Need. Commissioner Moffit made a motion to approve the staff recommendation, which was seconded by Commissioner Krumm, and unanimously approved.

ACTION: Memorial Hospital at Easton: Modification to Certificate of Need for Construction of Emergency Department and Ambulatory Care Departments, Docket No. 03-20-2112, is hereby APPROVED.

ITEM 7.

PRESENTATION: Report on the Medical Expenditure Panel Survey – Insurance Component: Maryland Sample Through 2003

Chairman Salamon asked Linda Bartnyska to present the results of the Maryland Sample of the Medical Expenditures Survey (MEPS) Insurance Component. Ms. Bartnyska provided the Commission with an overview of the MEPS – Insurance Component and then proceeded with examples of the types of information included in the draft report. She said the MEPS – Insurance Component is an annual, national survey of business establishments and governments. She noted that the sample is selected from a Census Bureau list of businesses with at least one employee, excluding the self-employed. Ms. Bartnyska said that potential changes to the survey were discussed at a MEPS-IC conference, including making data

collection current, as opposed to retrospective, so that data can be released in the following year. Another change suggested was to gather information on Health Saving Account product enrollments and contributions, as well as tracking changes in deductible and copayment requirements. She indicated that the purpose of this report is to supplement information contained in the biannual Health Insurance Coverage Report. Ms. Bartnyska discussed the employer-based coverage among workers that are 19 to 64 years of age, by sector and firm for 2002 through 2003. She also provided the status of all employees working at private sector establishments in Maryland using 2003 MEPS-IC data and the proportion enrolled in health insurance plans through their own employers. Ms. Bartnyska noted that as users of the MEPS-IC data, staff is in a better position to influence potential changes in data collection and output. She added that staff are looking forward to working with other states in identifying problems not only in the small group market, but in the larger insurance market, as well.

ITEM 8.

ACTION: Release of Report on Developing Patient Safety Initiatives that Extend Beyond Hospitals and Into Health Care Practitioners' Offices (as required under HB 2 of the 2004 Special Session of the Maryland General Assembly)

Chairman Salamon asked Dr. Cowdry to brief the Commission on the report to the Governor and the Maryland General Assembly. Dr. Cowdry summarized the reporting requirements of HB 2 of the 2004 Special Session requiring the Maryland Health Care Commission to work with the Health Services Cost Review Commission, the Department of Health and Mental Hygiene, the Maryland Patient Safety Center, the Maryland Board of Physicians, and third-party payers to develop a systemic patient safety center initiatives that extend beyond hospitals and into health care practitioner offices. He also provided background information related to the study of patient safety in Maryland, as well as the central role of health information technology and how it relates to extending patient safety efforts into healthcare practitioner offices. Dr. Cowdry noted that the Commission has discussed patient safety and health IT with a range of stakeholders, in addition to presenting a plenary speech on patient safety and health IT at a MedChi convention last month. He also said that the MHCC and the Health Services Cost Review Commission are collaborating on the development of an RFP for planning contracts for a Maryland regional health information exchange organization.

ACTION: Release of the Report on Developing Patient Safety Initiatives that Extend Beyond Hospitals and Into Health Care Practitioners' Offices (as required under HB 2 of the 2004 Special Session of the Maryland General Assembly), is hereby approved.

ITEM 9.

Adjournment

There being no further business, the meeting was adjourned at 4:30 p.m. upon motion of Commissioner Krumm, which was seconded by Commissioner Conway, and unanimously approved by the Commissioners.